IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.6586 of 2007

Shri Chandrakant Maruti Sonawane Petitioner
Vs.
Pune Municipal Transport Corporation Respondent

Mr.R.K.Bobade for petitioner.
Mr.R.G.Ketkar for respondent.

CORAM: B.H.MARLAPALLE, J.

December 5, 2007.

P.C.

. Heard Mr.Bobade, the learned counsel for the petitioner who was working as conductor with Badge No.547 under the Pune Municipal Transport, which is part of the Respondent no.1 - Corporation. He was issued a charge-sheet on 18/1/1989 for misappropriation of bus tickets by selling the tickets without following the serial numbers and for possession amount in excess of the tickets sold, while on duty on 11/1/1989. A Departmental Enquiry was initiated in which he appeared and also submitted a defence statement. The enquiry officer submitted his report and held the workman guilty of the charges levelled against him. This report was accepted by the employer and a second show cause notice was

issued on 13/12/1989. He submitted his reply to the same on 5/1/1990 and finally by the order dated 2/3/1990 he was dismissed from service by way of punishment. The petitioner raised dispute under the Industrial Disputes Act, 1947 challenging the order of dismissal as being illegal, unjust and improper. The said dispute came to be referred for adjudication in Reference (IDA) No. 77 of 1993 and the said reference has been dismissed by the final award dated 20/11/2003. Undoubtedly this petition has been filed belatedly on 31/8/2007 i.e. almost after four years and the petitioner claims that the delay caused in approaching this Court is on account of his ill health. However, the medical certificate annexed to the petition issued by the Command Hospital, Pune states that he was discharged on 31st December 2003.

. Be that as it may, the only question that requires consideration is whether the learned Judge of the Labour Court was justified in dismissing the reference on the demand of reinstatement by setting aside the order of punishment i.e. the order of dismissal.

. By Part I Award dated 5/8/2000 the Labour

Court had held that the enquiry conducted was fair and proper. Even the enquiry proceedings do indicate that the petitioner appeared before the Enquiry Officer. He was allowed to cross-examine the witnesses examined by the employer and he was also granted liberty to examine his own witnesses. He also submitted his written defence before the Enquiry Officer. On receipt of the enquiry officer's report which was accepted by the employer, the petitioner was issued a second show cause notice to which he submitted his reply and thus the principles of natural justice were duly complied with. The findings recorded by the Labour Court in the Part I Award holding that the enquiry conducted was fair and proper and in keeping with the principles of natural justice are required to be upheld.

. On the next issue of the charges levelled against the petitioner being proved, the Enquiry Officer has considered the documentary evidence submitted by the Corporation as well as the oral evidence. In his written defence statement the petitioner admitted that he had issued tickets by not following the serial numbers and in between tickets were misplaced. This is an implied admission that he

had sold some tickets and did not account for the excess cash found with him. He gave a lame explanation that it was his personal amount. The Corporation had proceeded on the basis that there was a misappropriation of Rs.1024=65. However, it is clear that the tickets missing were in the sum of Rs.310/-.

. Whether the misappropriation was in the sum of Rs.1024/- or it was Rs.310/-, the fact remains that the petitioner being a public servant and having been found guilty of misappropriating the Corporation funds in the sale of tickets, is a grave misconduct warranting the highest punishment of dismissal in asmuchas he was unworthy to be continued in service and the Corporation was justified in losing confidence in him. It is also required to be noted that the petitioner's past record of service was far from satisfactory. He was appointed on 21/5/1981 and during the tenure of about eight years, there were seven cases of dishonesty, forty cases of shortfall, five cases of unauthorised absence from duty and other ten cases thus making in all 62 cases against the petitioner. The employer considered not only the seriousness of the charges proved against the

petitioner but in fact also the past record of service. On these obtaining circumstances, dismissal order is not only legal but just and proper as well and, therefore, the Labour Court was justified in dismissing the reference. The reasoning set out by the Labour Court can neither be termed as perverse nor patently erroneous so as to call for interference under Article 227 of the Constitution.

(B.H.MARL